

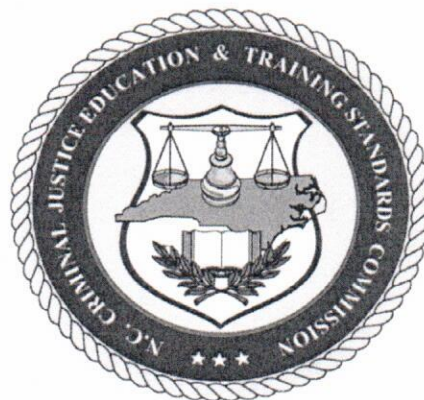
## PROPOSED RULE AMENDMENTS

**Public Hearing:**  
**SMI Emergency Rules**  
**May 13, 2020 – 10:00 am**

**Teleconference:**  
**1-888-808-6929**  
**Access Code: 4508949**

**Instructions for Oral and Written Comments:** The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to:

Charminique Williams  
Department of Justice  
Criminal Justice Standards Division  
PO Drawer 149  
Raleigh, NC 27602.



12 NCAC 09B .0310 is amended under emergency procedures as follows:

**12 NCAC 09B .0310 TERMS AND CONDITIONS -- SMI INSTRUCTORS**

(a) The term of a Speed Measurement Instrument (SMI) instructor, which includes radar, time-distance, and lidar instructors, is three years from the date the Commission issues the certificate, unless sooner terminated by the Commission. The certificate may be renewed for subsequent three year periods. The SMI instructor desiring renewal shall:

- (1) Hold general instructor certification as required in 12 NCAC 09B .0303.
- (2) Have been active in the SMI classroom instructional process during the previous certification period.
- (3) Successfully complete a Commission-approved SMI instructor re-certification course as required in 12 NCAC 09B .0218, .0219, or .0239.

(b) All SMI instructors seeking re-certification shall successfully complete the re-certification course within 12 months from expiration of the initial certification period or re-certification period. If re-certification training is not obtained within the 12-month period, successful completion of the appropriate instructor training program as required in 12 NCAC 09B .0308 is required to obtain instructor certification. This prescribed 12-month period does not extend the instructor certification period.

(c) Individuals who hold SMI Instructor certification may, for just cause, be granted an extension of the three year certification period, pursuant to Paragraph (b) of this Rule by the Director, on a one-time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from attending an SMI Instructor Re-Certification Course.

*History Note: Authority G.S. 17C-6;*

*Eff. November 1, 1981;*

*Readopted Eff. July 1, 1982;*

*Amended Eff. November 1, 2007; April 1, 1999; November 1, 1993; February 1, 1991; July 1, 1989;*

*December 1, 1987;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019.*

1 12 NCAC 09B .0409 is amended under emergency procedures as follows:

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3 **12 NCAC 09B .0409 SATISFACTION OF TRAINING -- SMI OPERATORS**

4 (a) To satisfy the training requirements for operator certification, a trainee shall complete all of the following:

- 5 (1) achieve a score of 70 percent correct answers on the comprehensive written examination, provided  
6 for in 12 NCAC 09B .0408(d).
- 7 (2) demonstrate successful completion of a certified offering of courses as prescribed under 12 NCAC  
8 09B .0212, .0213, .0214, .0215, .0238, .0242, or .0244 as shown by the certification of the school  
9 director.
- 10 (3) demonstrate 100 percent proficiency in the motor-skill and performance subject areas as  
11 demonstrated to a certified Speed Measurement Instrument (SMI) instructor and further evidenced  
12 through documentation on the Commission's SMI forms and by the subscribing instructor's  
13 certification of trainee competence.
- 14 (4) present evidence showing prior North Carolina certification in a Commission-certified operator  
15 training course as prescribed in 12 NCAC 09B .0212 .0213, .0214, .0238, .0242, .0244 or present  
16 evidence showing prior certification which meets or exceeds North Carolina certification, or present  
17 evidence showing completion of 16 hours of supervised field practice within 90 days after  
18 completing a Commission-certified radar operator training course as prescribed in 12 NCAC 09B  
19 .0212 .0213, .0242, .0244.
- 20 (5) Individuals who are applying for SMI operator certification may, for just cause, be granted an  
21 extension of the 90 day requirement period to complete the 16 hours of supervised field practice,  
22 pursuant to Subparagraph (a)(4) of this Rule, by the Director, on a one-time basis only not to  
23 exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency,  
24 course cancellation, or other exceptional circumstances which precluded the applicant from  
25 completing the required supervised field practice time.  
26

27 (b) Any trainee failing to achieve 100 percent proficiency in the motor-skill area may request written permission from  
28 the Director of the Standards Division for re-examination. The trainee's request for re-examination shall be made in  
29 writing and must be received by the Standards Division within 30 days of the original examination. The trainee's  
30 request for re-examination shall include the favorable recommendation of the school director who administered the  
31 course. A trainee shall have, within 90 days of the original examination, only one opportunity for motor-skill  
32 re-examination and must satisfactorily complete each identified area of deficiency on the original motor-skill  
33 examination. The trainee shall be notified by the Standards Division staff of a place, time and date for re-examination.  
34 If the trainee fails to achieve the prescribed score on the examination, the trainee shall not be recommended for  
35 certification and shall enroll and complete a subsequent course offering in its entirety before further examination may  
36 be permitted.

37 (c) To satisfy the training requirements for operator re-certification, an operator seeking re-certification shall:

- 1 (1) Achieve a score of 75 percent correct answers on the comprehensive written examination provided  
2 for in 12 NCAC 09B .0408(e).
- 3 (2) Demonstrate successful completion of a certified offering of courses as prescribed under 12 NCAC  
4 09B .0218, .0219, .0220, .0221, .0222, .0239, .0240, .0243, or .0245 as shown by the certification  
5 of the school director.
- 6 (3) Satisfy all motor-skill requirements as required in Subparagraph (a)(3) of this Rule.
- 7 (d) At the time a trainee seeking operator re-certification fails to achieve the prescribed requirements on the  
8 comprehensive written examination as specified in 12 NCAC 09B .0409(c)(1), certification of the officer  
9 automatically and immediately terminates and that officer shall not be re-certified until successful completion of a  
10 subsequent course offering as prescribed under either 12 NCAC 09B .0212, .0213, .0214, .0238, .0242, or .0244 before  
11 further examination is permitted.
- 12 (e) At the time a trainee seeking operator re-certification fails to achieve the prescribed motor-skill requirements as  
13 specified in 12 NCAC 09B .0409(c)(3), certification of the officer automatically and immediately terminates and that  
14 officer shall not be re-certified until successful completion of the required motor-skill testing. Provided, however,  
15 such an officer may request re-examination as prescribed in Paragraph (b) of this Rule.

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17 *History Note: Authority G.S. 17C-6;*  
18 *Eff. November 1, 1981;*  
19 *Readopted w/change Eff. July 1, 1982;*  
20 *Amended Eff. November 1, 2007; May 1, 2004; April 1, 1999; December 1, 1987; August 1, 1984;*  
21 *October 1, 1983; April 1, 1983;*  
22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*  
23 *2019.*  
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12 NCAC 09C .0308 is amended under emergency procedures as follows:

**12 NCAC 09C .0308      SPEED MEASUREMENT INSTRUMENT (SMI) OPERATORS CERTIFICATION PROGRAM**

(a) Every person employed or appointed by the state or any political subdivision thereof as a law enforcement officer who uses a Speed Measuring Instrument for enforcement purposes shall hold certification from the Commission authorizing the officer to operate the speed measuring instrument.

(b) Standards Division staff shall issue certification in one of the following categories:

(1) radar operator speed measurement instrument (SMI) certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0210, .0212, .0213, .0218, .0220, .0221, .0242, .0243, .0244, or .0245;

(2) time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0214, .0219, .0221, .0222, .0244, or .0245;

(3) lidar speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0237, .0238, .0239, .0240, .0242, .0243, .0244, or .0245.

(c) Certification in one or more categories reflects operational proficiency in the designated type(s) of approved equipment for which the trainee has been examined and tested. Such certification is for a three year period from the date of issue and re-certifications is for a three year period from the date of issue, unless sooner terminated by the Commission. The applicant shall meet the following requirements for operator certification or re-certification within 90 days of course completion and upon the presentation of documentary evidence showing that the applicant:

(1) has successfully completed the training program as required in 12 NCAC 09B .0210, .0211, .0212, .0213, .0214, .0218, .0219, .0220, .0221, .0222, .0237, .0238, .0239, .0240, .0242, .0243, .0244, or .0245; and

(2) has successfully completed a Commission-certified basic law enforcement training course as required in 12 NCAC 09B .0400 and is currently certified in a probationary status or holds general law enforcement certification; or

(3) if the applicant is a sheriff, deputy sheriff, or other sworn appointee with arrest authority governed by the provisions of G.S. 17E has met and is in compliance with the employment and training standards as established and made effective for such position by the North Carolina Sheriffs' Education and Training Standards Commission.

(d) Certified operators shall be notified by the Commission not less than 90 days prior to expiration of certification. All applicants for re-certification shall successfully complete a Commission-approved re-certification course within 12 months from the expiration of the previous certification. If re-certification is not obtained within the 12 month period, successful completion of the appropriate operator training programs as required by 12 NCAC 09B .0409(a) shall be required to obtain operator certification. This prescribed 12 month period shall not extend the operator

1 certification period beyond its specified expiration date. When a re-certification course is successfully completed prior  
2 to the expiration of the previous certification, the new certification shall be issued by the Criminal Justice Standards  
3 Division effective upon the receipt of the Post-Delivery Report of Training Course Presentation. The Division Director  
4 may, for just cause, grant an extension of the SMI Operator's expiration date, on a one-time basis only, not to exceed  
5 12 months, for just cause. For the purposes of this Rule, just cause means accident, illness, emergency, recertification  
6 course cancellation, or other exceptional circumstances which precluded the SMI operator from completing a  
7 recertification course prior to the SMI Operator certification being expired.

8 (e) Operator re-certification shall be issued only to officers with current law enforcement certification. When a re-  
9 certification course is successfully completed prior to the expiration of the previous certification, the new certification  
10 shall be issued by the Criminal Justice Standards Division effective upon the receipt of the Post-Delivery Report of  
11 Training Course Presentation.

12 (f) All certifications issued pursuant to this Rule and the standards in effect between November 1, 1981 and July 1,  
13 1982 shall continue with full force and effect; however, said certifications are subject to the provisions of 12 NCAC  
14 09C .0308(d) and (e).

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16 *History Note: Authority G.S. 17C-6;*  
17 *Eff. November 1, 1981;*  
18 *Readopted w/change Eff. July 1, 1982;*  
19 *Temporary Amendment Eff. February 24, 1984, for a period of 120 days to expire on June 22, 1984;*  
20 *Amended Eff. November 1, 2007; February 1, 2006; May 1, 2004; April 1, 1999; November 1, 1993;*  
21 *March 1, 1992; February 1, 1991; December 1, 1987;*  
22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*  
23 *2019.*  
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